IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5532 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHARDABEN W/O. RAMESHBHAI J PATEL

Versus

COMMISSIONER OF POLICE SURAT

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Appearance:

MR SUNIL C PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/02/2000

ORAL JUDGEMENT

#. Heard Mr.Sunil C. Patel, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 6-7-1999 passed by

respondent No. 1 - The Commissioner of Police, Surat City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced from running page 17 interalia indicate that the petitioner was involved in two prohibition cases registered at Umra Police Station vide C.R. No : 215 of 1999 and 228 /99 dated 8-3-1999 and 11-3-1999 respectively. That the country made liquor was seized in both the cases and the matters are still pending for further investigation.

#. The grounds of detention further indicate that two witnesses on assurance of their anonymity have given their statement vide date 12-6-99 and 14-6-99 and have stated the incidents alleged to have occurred on 18-4-99 and 30-5-1999 respectively. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the petitioner is released on bail in both the cases registered against her on 8-3-1999 and 11-3-1999 respectively. However, before passing the impugned order on 6-7-1999, the detaining authority has failed to consider the aspect of claiming cancellation of the said bail before passing the impugned order, which itself shows non application of mind and thereby, vitiated the subjective satisfaction and has rendered the impugned order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved

and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, the grounds of detention does not disclose any fact from which a reasonable inference could be drawn that the detaining authority has applied his mind to claim cancellation of bail under Section 437 (5) of CrPC before passing the impugned order. That despite service of rule, none of the respondents has filed any affidavit and as such, there is no explanation as to why such remedy was not considered before passing the impugned order, hence, the impugned order could hardly be sustained.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 6-7-99 passed by respondent No. 1 - The Commissioner of Police, Surat City against the petitioner is hereby quashed and set aside. The petitioner - SHARDABEN W/O. RAMESHBHAI J PATEL is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 23-2-2000 [A.K.Trivedi, J.]

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